

N. 2898

No. 14469

United States
Court of Appeals
for the Ninth Circuit

JOHN K. BORG,

Appellant,

vs.

LOUIS A. BOAS and THE NEWS-REVIEW
PUBLISHING COMPANY, INC., a Corpora-
tion,

Appellees,

Transcript of Record
In Two Volumes
Volume I
(Pages 1 to 24)

Appeal from the United States District Court
for the District of Idaho,
Central Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	7
Ex. A—Extracts from Printed Article	15
Certificate of Clerk	23
Complaint	3
Judgment	17
Names and Addresses of Attorneys	1
Notice of Appeal	18
Order, Filed June 14, 1954	22
Statement of Points Relied On by Plaintiff for Reversal of Judgment	21
Undertaking on Appeal	20
Verdict	17
Transcript of Proceedings	25
Motion for Directed Verdict	147, 286
Offer of Proof	70
Ruling of the Court	287

INDEX	PAGE
Witnesses, Defendants':	.
Alsager, Melvin	
—direct	151
—cross	181
—redirect	214
—recross	214
Barrackman, Al	
—direct	243
—cross	250
Boas, Louis A.	
—direct	267
—cross	268
—redirect	270
Cassin, Fred	
—direct	222
—cross	231
—redirect	235, 236
—recross	236
David, Peggy	
—direct	215
—cross	219
Hamilton, Ladd	
—direct	251
—cross	260
—redirect	266

INDEX

PAGE

Witnesses, Defendants'—(Continued)

Hill, E. D.

—direct 220

Tunnicliff, R. J.

—direct 240

—cross 242

Witnesses, Plaintiff's:

Alford, A. L.

—direct41, 144

Blake, Winn

—direct 280

Boas, Louis A.

—direct29, 136

Borg, John K.

—direct44, 71

—cross 75

—redirect 104

—recross 111

Felton, Tom

—direct 282

Guernsey, Roy D.

—direct 68

INDEX

PAGE

Witnesses, Plaintiff's—(Continued)

Huff, Laurence

—direct112, 275

—cross116, 279

—redirect 117

Johnston, William F.

—direct 43, 141

—cross 143

Martinson, Lloyd G.

—direct60, 272

—cross61, 65, 274

Morgan, A. L. (Deposition)

—direct 127

O'Donnell, J. M.

—direct 118

—cross 121

Tunnicliff, R. J.

—direct 122

—cross 123

—redirect 125

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In the United States District Court for the District
of Idaho, Central Division

No. 1950

JOHN K. BORG,

Plaintiff,

vs.

T. C. THOMAS, LOUIS A. BOAS, and THE
NEWS-REVIEW PUBLISHING COMPANY,
INC.,

Defendants.

COMPLAINT

Plaintiff complains and alleges:

I.

That at all times referred to herein, the defendant News-Review Publishing Company, Inc., was and is an Idaho corporation, existing under and by virtue of the laws of the State of Idaho, with its principal place of business in Moscow, Idaho. Said corporation is the owner and publisher of a daily newspaper, known and titled as "The Daily Idahonian," and Louis A. Boas is the editor thereof, which paper has a large circulation in the states of Idaho and Washington.

The defendant T. C. Thomas is a resident within the County of Latah, State of Idaho.

II.

The plaintiff, John K. Borg, has for many years heretofore been a resident of Moscow, Idaho. Said

plaintiff is now, and has been since September, 1953, a resident of Pullman, Washington, and is employed as a clerk in the Washington Hotel, in Pullman, Washington. That from January, 1953, to September, 1953, and for many years prior to January, 1953, the plaintiff had been and was a Justice of the Peace, in and for Latah County, State of Idaho, and did, prior to the acts herein complained of, enjoy an excellent reputation for truth, veracity and integrity, and has been a respected citizen.

III.

The jurisdiction of this Court is founded on diversity of citizenship. The amount in controversy, exclusive of interest and costs, exceeds the amount of \$3,000.00.

IV.

That the defendant Thomas, on or before the 12th day of May, 1953, became the author of a written article concerning this plaintiff, which article, or quotations therefrom, was printed in the Daily Idahoian on May 13, 1953, with the consent, knowledge and authorization of the defendant Thomas, and circulated throughout the states of Idaho and Washington. That such article and publication was false and untrue, but was written, published and circulated with the intent to, and did, directly, indirectly and by innuendo, accuse the plaintiff of dishonesty, trickery, corruptness and of malfeasance and misfeasance of public office; and with the purpose of destroying plaintiff's reputation, exposing him to

public hatred, contempt, ridicule and obloquy, and to deprive him of public confidence.

V.

That said article was false and untrue, particularly in the following respects:

“Thomas then made reference to legal maneuvers in which a hearing was set for January 15 at 9 a.m. At 8 a.m. that day, Thomas explained, Alsager notified Judge John K. Borg that he would be ready at 9. Alsager and his witnesses were present at police court, normally the place where such hearings are held. But the judge and Estes, Thomas said, had gone to the county courthouse to hear the case.

“ ‘This was a ridiculous situation,’ said Captain Thomas. A motion for dismissal was made and it was dismissed. ‘If this had been an honest mistake, it could have been easily rectified by lifting a telephone and telling the prosecutor to bring his witnesses and come on over.’

* * *

“But these things, Thomas said, ‘continue to disturb me’:

* * *

“ ‘3. The extraordinary circumstances in which the first felony was dismissed.

“ ‘4. Circumstances of the dismissal of the second charge against Estes.

* * *

“ ‘There is no way to get justice or to correct the faults in the administration of justice * * * without a grand jury,’ Thomas concluded.”

VI.

That by reason of the aforesaid article, and remarks of the defendant Thomas, and the publication and distribution of the Daily Idahonian of May 13 throughout Latah and Whitman Counties in Idaho and Washington, and in miscellaneous other states, plaintiff has been deprived of public confidence, has suffered embarrassment, humiliation and mental agony, has been held in contempt, calumny, ridicule, and such publication has caused plaintiff's friends and acquaintances of years standing to avoid the plaintiff, all to his damage in the sum of \$75,000.00.

Wherefore, plaintiff prays for judgment against the defendants, T. C. Thomas, Louis A. Boas and The News-Review Publishing Company, jointly and individually, in the sum of \$75,000.00; for his costs and disbursements herein; and for such other and further relief as to the Court shall seem meet and proper.

J. P. TONKOFF,

ESTES & FELTON,

By /s/ MURRAY ESTES,

Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed November 10, 1953.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS LOUIS A. BOAS
AND THE NEWS-REVIEW PUBLISHING
COMPANY, INC.

Comes Now the defendants Louis A. Boas and The News-Review Publishing Company, Inc., a corporation, and for answer to plaintiff's complaint on file herein admit, deny and allege as follows:

I.

Admit the allegations contained in Paragraph I of said complaint.

II.

Answering Paragraph II of said complaint, defendants admit that the plaintiff John K. Borg has for many years been a resident of Moscow, Idaho; admit that from January, 1953, to September, 1953, plaintiff was a Justice of the Peace for Latah County, Idaho, and admit that since September, 1953, said plaintiff has been employed as a clerk in the Washington Hotel in Pullman, Washington. Defendants deny each and every of the remaining allegations in Paragraph II of said complaint.

III.

Answering Paragraph III of said complaint, defendants admit that the amount in controversy, exclusive of interest and costs, exceeds the amount of \$3,000.00. Defendants deny each and every of the remaining allegations in said Paragraph III of said complaint.

IV.

Answering Paragraph IV of said complaint, defendants deny each and every allegation therein contained.

V.

Answering Paragraph V of said complaint, defendants admit that the quoted matter set forth therein was published in the issue of the Daily Idahoian printed and published by the defendant The News-Review Publishing Company, Inc., on May 13, 1953, and in this connection defendants allege that the quoted portions of said Paragraph V are only extracts from the printed article, the whole of which is set forth and attached hereto as Exhibit "A" and by reference made a part hereof and that said quoted extracts thereof set forth in Paragraph V must be read in connection with and as they appear in the whole of said article in order to ascertain their true purpose, meaning and intent.

VI.

Answering Paragraph VI of said complaint, defendants deny each and every allegation contained therein.

VII.

Defendants deny each and every allegation in said complaint not expressly admitted to be true.

First Affirmative Defense

Further answering said complaint and as a first affirmative defense thereto, these answering defendants allege:

I.

That the Court lacks jurisdiction of the subject matter of the action or the parties thereto.

Second Affirmative Defense

Further answering said complaint and as a second affirmative defense thereto, these answering defendants allege:

I.

That the complaint fails to state a cause of action against these defendants upon which relief can be granted.

Third Affirmative Defense

Further answering said complaint and as a third affirmative defense thereto, these defendants allege as follows:

I.

That each and every of the statements quoted in Paragraph V of plaintiff's complaint are true and correct.

Fourth Affirmative Defense

Further answering said complaint and as a fourth affirmative defense thereto, these defendants allege as follows:

I.

That at all times referred to in plaintiff's Complaint, the defendant, T. C. Thomas, was a Captain in the United States Navy, assigned to duty at the University of Idaho in Moscow, Idaho, as a professor of Naval Science, and as Commanding Officer of

the Naval Reserve Officers' Training Corps Unit at Moscow, Idaho. That the Naval Reserve Officers' Training Corps is a national program for the education and training of citizens to qualify them to serve as officers in the United States Navy and Marine Corps. That during the above-mentioned period, one Richard Shoup, was duly and regularly enrolled as a member of the Moscow Unit of the Naval Reserve Officers' Training Corps, and under the command and jurisdiction of the said defendant, T. C. Thomas, who was responsible for his educational progress and training.

That on or about December 14, 1952, the above-mentioned Richard Shoup became involved in an altercation and combat with one Murray Estes, in Moscow, Idaho, which resulted in:

1. Estes being charged in the Probate Court of Latah County, Idaho, with the crime of: "Assault with a Deadly Weapon—a Felony."

2. Estes being dismissed from the charge filed in the Probate Court and transferred to the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, by John K. Borg, Justice of the said Court, who is the plaintiff in this action.

3. Estes being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace, with the offense of: "Assault with a Deadly Weapon."

4. Estes being dismissed from the charge in the Justice Court of the Second Precinct before Kent Power, Justice of the Peace, by Justice of the Peace, John K. Borg, who is the plaintiff in this action, before whom said case was transferred.

5. Estes being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace, with the offense of: "Battery."

6. Estes pleading guilty in the Probate Court of Latah County, Idaho, to the charge of Battery, which proceeding was initiated in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, and being adjudged by said Probate Court to pay a fine of \$100.00 and costs of the prosecution in the sum of \$3.00.

7. Shoup being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace, with the crime of: "Attempt to Compound a Crime—a Felony."

8. Shoup being dismissed from the charge set forth in the preceding subdivision by Kent Power, Justice of the Peace.

9. That the proceedings had and disposition of the above-mentioned official public judicial proceedings caused a large number of citizens of Latah County, Idaho, to petition the authorities of said county, and particularly the judge of the second judicial district of the State of Idaho in and for the

County of Latah, to convene a Grand Jury for an investigation of said proceedings and the public officials participating in the same, and, in addition thereto, a great number of the citizens and residents of Latah County held a public meeting in the High School at Moscow, Idaho, on the evening of May 12, 1953, attended by said district judge, where said proceedings and the calling of a Grand Jury to investigate the same and the public officials connected therewith became a matter of public discussion.

That the quotations set forth in paragraph V of plaintiff's complaint are only parts of an article printed and published in the Daily Idahonian on May 13, 1953, the whole of which is hereunto attached as Exhibit "A."

That said article was a full and fair report of a public meeting of citizens held in the Moscow High School in Moscow, Idaho, on May 12, 1953, for the purpose of discussing the subjects and proceedings of public, official, judicial proceedings theretofore instituted and pending in the Courts of Latah County, State of Idaho.

That the language quoted in paragraph V of plaintiff's complaint was spoken at said meeting by the defendant, Thomas, and was an expression of his own opinion upon public, official, judicial proceedings, and was made for the purpose of acquainting the citizens and taxpayers of Latah County with matters, which he believed to be and which were of public interest and for the good and welfare

of the citizens of said County and were made without malice or ill feeling toward the plaintiff and that nothing was said by him for the purpose of injuring the plaintiff in any manner whatsoever.

That the article attached hereto as Exhibit "A" constitutes a true and fair report of the public meeting hereinabove referred to and each and all of the words and statements therein contained, in their natural and ordinary meaning, are true in substance and in fact, and in so far as the words consist of expressions of opinion, they are fair and impartial comments upon the public, official, judicial proceedings referred to, made in good faith and without malice and upon the said facts, which are a matter of public interest and concern, and were spoken and published for the public benefit and are, therefore, privileged.

That in publishing the matters appearing in Exhibit "A," these defendants believed that the matters and things therein were true and of such general interest to the public to justify its publication and make it incumbent upon them to publish the same.

That in publishing said Exhibit "A," these defendants acted with full right to do so for the benefit of the entire community of Moscow, Idaho, and the public in general and under privilege.

That in alleging in this affirmative defense that the statements of fact contained in said Exhibit "A" are true, these defendants have reference to every statement of fact in the aforesaid Exhibit "A" and

relating to plaintiff and the conduct of the plaintiff with respect to the matters therein referred to.

Wherefore, these answering defendants pray that plaintiff's action be dismissed, that he take nothing thereby, and that these defendants have and recover their costs and disbursements necessarily expended therein, and that these defendants be granted such other and further general relief as to the Court may seem warranted upon a hearing.

/s/ MAURICE H. GREENE,
Attorney for Defendants Louis A. Boas and The
News-Review Publishing Company. Inc.

Duly verified.

Good Government Association Formed Public Meeting Called At School

tion of the Moscow population, numbering some 175, not satisfied with recent actions which brought apt conclusion of the legal cases involving a Moscow y and a University of Idaho student, went on record blic gathering last night "requesting a grand jury" clear away what the group called a "miscarriage of

gathering at Moscow high school last night was called est to the actions growing out of incidents at the a campus restaurant, last December 14, involving i Shoup, university student, and Murray Estes, local

Y. morning. District Judge e, upon whose order rests e of a grand jury, said he recommend to Latah county ting Attorney Melvin Al- at a "full and complete in- approval to the county con- approval of the prosecu- tency fund for financing a investigation.

ing such an investigation, facts warrant the filing of tions in the cases," Judge e said he would then con- a future course of action, it be through the local level or through call of a jury."

McQuade, in attendance at night's session and frequently upon to answer questions the so-called "free forum," d his earlier remarks that not call a grand jury if the f the call is on rumor alone, e I won't see innocent peo- rt."

Lengthy Review
night's session opened (fol- selection of Dean D. S. of the university Forestry as temporary chairman) detailed review of the Estes- cases by Capt. Thomas C. a commander of the univer- val ROTC unit, of which was a member.

ain Thomas presented his tation of the incidents began at a party at the Ida- club, at which Estes was a, and continued through the d altercation at the Perch subsequent legal maneuvers

last week with to a battery charge dical of charges against Shoup charging went to compound a felony.

"To my knowledge," Judge McQuade said, "Captain Thomas reported certain facts and incidents which have never before been told publicly and were not a part of any court record . . . they, if they are true, could change matters considerably."

Only One Side

When asked by Mrs. Helea Howard "if Captain Thomas' facts are true, would you accept that as sufficient evidence for the calling of a grand jury?" Judge McQuade answered: "If they are all true and there are no explanatory facts which neutralize them, it would be proper to bring in a grand jury. But the captain has brought in only one side of this case."

McQuade, after complimenting Captain Thomas for his detailed review and its presentation, declared the navy man had put forth only facts which were favorable to his side.

Last night's meeting came about as a result of an earlier refusal by Judge McQuade to call a grand jury to investigate possible evidences of injustices during the four-month course of the Estes-Shoup cases.

During the course of the three-hour session last night, motions from the floor resulted in the following actions:

Four Steps

1. Formation of an organization to be known as the provisional Latah County Good Government association.

2. Authorization of the temporary chairman to appoint a committee to poll Latah county residents on the question of whether they want a grand jury impaneled.

3. Selection of a committee, made up of Jeffers, Malcolm Neely, Carman Mell, Moscow; William McCreery, Kendrick, and J. O. Broyles, Potlatch, to put forward a slate of officers, draw up an organizational plan and arrange for future meetings.

4. Requested the temporary chairman to inform Judge McQuade that it was the desire of the group that a grand jury be called.

It was upon the issuance of the statement by Chairman Jeffers to McQuade revealing the desire of the group that Judge McQuade repeated his stand that he would "not call a grand jury on rumor alone."

Both sides of the issue were presented at the session. The Rev. W. W. Prall, speaking as a "private citizen," urged more investigation. "Let's find out first, what a grand jury can do. To be perfectly frank, all I have heard is rumor and I doubt if you can investigate a rumor."

He also explained that he "did not believe that at the moment there is anything on which the judge could impanel a grand jury."

Needs Evidence

To which Judge McQuade replied: "All the petitions in the world won't find a man guilty. The only thing that means anything is evidence. I'm not going to call the grand jury. I'm not going to take a chance of having people hurt."

In his detailed review of the cases, Captain Thomas said that shortly after the party at the Idaho Ad club at which both Estes and J. M. O'Donnell, then county prosecuting attorney, were present, Estes went to the Perch and accosted Shoup. The proprietor of the cafe intervened and police were summoned.

The first police officer who arrived, Captain Thomas said, allowed Estes to depart "and did not take his pistol from him." The second officer, he said, arrived and took Shoup to jail, where he



questioned "for quite a considerable time."

was then thoroughly established," Thomas said, "that he was completely innocent, and later admitted that it had been a case of mistaken identity."

On several instances where he had been dissuaded from any charges against Estes, a charge was filed soon after Mel Alsager took office as prosecuting attorney, some four weeks after the incident, Thomas said.

Thomas then made reference to maneuvers in which a hearing was set for January 15 at 9 A. M. that day, Thomas said, Alsager notified Judge K. Borg that he would be at 9. Alsager and his witnesses were present at police court, the place where such hearings are held. But the judge, Thomas said, had gone to the county courthouse to hear case.

Ridiculous Situation
This was a ridiculous situation," Captain Thomas. A motion for dismissal was made and it was denied. "If this had been an honest mistake, it could have been rectified by lifting a telephone and telling the prosecutor of his witnesses and come over."

A second felony charge was filed five days later but this also was denied, Captain Thomas said. He ground that there was insufficient evidence upon which to file Estes over.

At the meantime, Captain Thomas explained, the boy (Shoup) was going a strain which was evidenced in bad grades and a possibility he would be expelled from naval ROTC.

At the end of January," Thomas continued, "the individual who had the trouble was scott free and the victim was subject to arrest from the navy and in order of his losing his chance to become a naval officer. It was not right."

After Shoup's parents came from McKeesport, Pa., and it was then that a simple battery charge would be brought against him. This third charge was filed after Easter, Thomas added. Captain Thomas then charged

Probate Judge Lloyd Martin attempted to hold a "quiet, 3 day trial." Alsager was told to let the boy and no other witnesses, Thomas said. The prosecutor first agreed and "then when realized what was happening, properly refused to go along with it."

Next day a charge was filed at Shoup alleging that he had attempted to compound a felony. Thomas said that this charge could have stood up in court.

Cites Statement

On April 23, Captain Thomas said McQuade held a conference in which he dissuaded Thomas from allowing his secretary to take notes. He went on that the following day an article appeared in the Daily Idahoian which quoted Judge McQuade as saying that an agreement had been reached by all principals in the case and that there was no justification for calling a grand jury.

Thomas said the story quoted McQuade as saying that attorneys for both sides objected to the expense of a grand jury except as a last resort. Thomas said that was erroneous, that no such agreement was reached.

On May 5, Thomas continued, there was another effort to hold a quiet trial, but that Alsager again refused, saying a public trial had been set for May 6 and that was when he intended to have it.

Estes appeared privately before the judge, pleading guilty to the charge of battery and was fined \$100. After Estes' conviction, the charge against Shoup was dismissed.

"At long last," Captain Thomas said, "we had Shoup freed."

But these things, Thomas said, "continue to disturb me."

"1. Failure of the police to arrest Estes.

"2. Failure of the police to take the pistol from Estes.

"3. The extraordinary circumstances in which the first felony was dismissed.

"4. Circumstances of the dismissal of the second charge against Estes.

"5. The reasons for the steps which McQuade took to avoid calling a grand jury."

"What to do about it? There has been no change in the local set up since December. The same faces hold office. The same thing could take place and again we'd go through this same rigamarole. There is no way to get justice or to correct the faults in the administration of justice . . . without a grand jury," Thomas concluded.

It was then that Judge McQuade took the floor to offer rebuttal to the statements made by Captain

Thomas and to present his reasons for refusing to call a grand jury.

Others Speak

Following Judge McQuade's dissertation, Chairman Jeffers declared a "free forum" and limited each speaker to three minutes.

Mrs. Bernice Brigham, Genesee, declared "this is not the only case of miscarriage of justice here" and added "it is only an indication of the type of justice Latah county has had for a long time."

Dr. R. E. Hosack, another faculty member, said he had been "disturbed by a feeling of uncertainty on the part of Moscow residents over the way local justice has been handled."

"I am also disturbed when a judge throws cold water in the face of the ancient and honorable institution of the grand jury. I think a grand jury would clear the air."

Clifford I. Dobler, law instructor, said "I don't teach about grand juries, but last week I got hold of a book called the Idaho code. I found that 16 grand jurors get \$4 a day for every day they meet plus 15 cents a mile traveling money." Thus, he said, a grand jury "would not be so expensive as Judge McQuade had intimated." And, he added, "the only people who could be injured are the guilty parties."

McQuade corrected Dobler by stating that grand jurors now get \$6 daily plus 25 cents mileage, which would amount to about \$96 daily while in session, in addition to costs necessary to subpoena witnesses.

Cites Example

McQuade made reference to a recent call to southern Idaho where he had tried grand jury indictments. In Bingham county, he said, seven men were indicted and not one convicted. But, he said, that in order to meet their legal expenses, they had all mortgaged their homes, sold their furnishings and cars, borrowed on life insurance and from friends and relatives.

"That's what I mean when I say innocent people can be hurt."

Among the other brief comments from the floor was that made by Alsager who said: "My difficulty with the Estes case has been mostly with the lower court judges. They seem to be cooperating with the defendant more than with me. I don't mean they should side with me, but they should help me get a case to the right court at the right time."

This morning Mrs. R. E. Hosack gave this statement to the Idahoian:

"As president of the Moscow Council of Church Women, I wish to make it clear that the reports in the newspaper associating the Council, in my name, with the preliminary arrangements for the public meeting held in the high school Tuesday evening to discuss the administration of justice in Latah county, were erroneous and misleading. The Moscow Council of Church Women was in no way associated with the arrangements for this or any other meeting for this purpose. Any connection which I have had with this matter has been purely in the capacity of a private citizen."

[Title of District Court and Cause.]

VERDICT

We, the jury in the above-entitled cause, find for the defendants, Louis A. Boas and The News-Review Publishing Company, Inc., and against the plaintiff.

/s/ WAYNE A. JOHNSON,
Foreman.

[Endorsed]: Filed April 8, 1954.

In the United States District Court for the District
of Idaho, Central Division
No. 1950

JOHN K. BORG,

Plaintiff,

vs.

LOUIS A. BOAS and THE NEWS-REVIEW
PUBLISHING COMPANY, INC.,

Defendants.

JUDGMENT

This cause came on for trial before the Court and jury on April 5, 1954, et seq., both parties appearing by counsel, and the issues having been duly tried, and the Court having directed the jury to render a verdict for defendants.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is Ordered and Adjudged that the plaintiff take nothing upon his complaint herein, and that the defendants, Louis A.

Boas and The News-Review Publishing Company, Inc., have and recover from the plaintiff their costs and disbursements incurred herein, taxed in the sum of \$104.04.

Dated this 8th day of April, 1954.

[Seal] /s/ ED M. BRYAN,
 Clerk.

[Endorsed]: Filed April 8, 1954.

In the United States District Court for the District
of Idaho, Central Division
No. 1950

JOHN K. BORG,

Plaintiff,

vs.

LOUIS A. BOAS and THE NEWS-REVIEW
PUBLISHING COMPANY, INC.,

Defendants.

No. 1951

JOHN K. BORG,

Plaintiff,

vs.

THE TRIBUNE PUBLISHING COMPANY, a
Corporation,

Defendant.

NOTICE OF APPEAL

To Louis A. Boas and The News-Review Publishing Company, Inc., Defendants in Action No. 1950, and to Maurice H. Greene, Attorney for said

Defendants; and to The Tribune Publishing Company, a Corporation, Defendant in Action No. 1951, and to Clements & Clements, Attorneys for Said Defendant:

You, and each of you, will please take notice that the above-named plaintiff, John K. Borg, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from those certain judgments made and entered in the above-entitled Court, and causes, on the 8th day of April, in favor of the defendants, and against the plaintiff, in each of said actions.

Notice of appeal in the above-entitled causes is combined for the reason that said actions were consolidated for trial, and a single record of evidence was adduced, which is applicable to said actions jointly.

Dated this 7th day of May, 1954.

J. P. TONKOFF,

MURRAY ESTES,

By /s/ MURRAY ESTES,

Attorneys for Plaintiff.

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Causes.]

Nos. 1950 and 1951

UNDERTAKING ON APPEAL

Whereas, the Plaintiff desires to give an undertaking on appeal to 9th Circuit Court of Appeals as provided in Rule 73 of The Federal Rules of Civil Procedure as set forth in U.S.C.A.

Now, Therefore, the undersigned Surety, the Fidelity and Deposit Company of Maryland, a surety company authorized to act as Surety on bonds and undertakings in the State of Idaho, does hereby obligate itself to the said Defendants under such statutory obligations in the sum of Five Hundred and No/100 Dollars.

Dated May 4, 1954.

[Seal]

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By /s/ E. W. NEWSOME,
Its Attorney-in-Fact.

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Cause.]

No. 1950 and No. 1951

STATEMENT OF POINTS RELIED ON BY
PLAINTIFF FOR REVERSAL OF JUDGMENT

Comes now the plaintiff in the above-entitled causes, which were consolidated for trial, and files the following statement of points, relied upon by the plaintiff for reversal of the judgment entered in said actions by the United States District Court, for the District of Idaho, Central Division, on the 8th day of April, 1954.

I.

The Court erred in rejecting Exhibits Nos. 2, 3, 4 and 5, offered in evidence by the plaintiff.

II.

The Court erred in sustaining defendant's objections to plaintiff's offer of evidence to establish the circulation of the articles complained of, and the impression and understanding created by such articles upon the readers thereof.

III.

The Court erred in permitting into evidence Exhibit No. 23.

IV.

The Court erred in permitting into evidence Exhibit No. 12.

V.

The Court erred in directing the jury to return a

verdict in favor of the defendants and against the plaintiff, and in directing the entry of judgment in accordance with such verdict.

Dated this 8th day of May, 1954.

J. P. TONKOFF,

MURRAY ESTES,

By /s/ MURRAY ESTES,

Attorneys for Plaintiff.

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

ORDER

Good cause appearing therefor,

It is Ordered That the time within which the record on appeal may be filed and the appeal docketed in the United States Court of Appeals for the Ninth Circuit be, and the same hereby is extended to August 5, 1954.

Dated this 14th day of June, 1954.

/s/ CHASE A. CLARK,

District Judge.

[Endorsed]: Filed June 14, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP), to wit:

1. Complaint.
2. Answer of Defendants Louis A. Boas and The News-Review Publishing Company, Inc.
3. Verdict.
4. Judgment.
5. Notice of Appeal.
6. Undertaking on Appeal.
7. Designation of Parts of Record Deemed Necessary on Appeal.
8. Statement of Points Relied on by Plaintiff for Reversal of Judgment.
9. Order extending time to file record on appeal.
10. Transcript of Testimony.
11. Exhibits Nos. 1 to 24, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this 31st day of July, 1954.

CLERK.

[Endorsed]: No. 14469. United States Court of Appeals for the Ninth Circuit. John K. Borg, Appellant, vs. Louis A. Boas and The News-Review Publishing Company, Inc., a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Central Division.

Filed August 4, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.